

BEFORE

THE HON'BLE MR. JUSTICE B.P. KATAKEY

This appeal by the petitioner in Misc.(LA) Case No.65/1999 is directed against the judgment and order dated 09.05.2000 passed by the learned Addl. District Judge, Dibrugarh in the said proceeding dismissing the same on the ground that at the sale instances proved by the present petitioner before the learned Court below being of the years 1977, 1995 and 1996, the same cannot be the basis for ascertaining the market value of the land acquired in the year 1970.

I have heard Mrs. M. Hazarika, learned Sr. counsel for the appellant and also Mr. Gogoi, learned State counsel appearing for the respondent Collector.

Referring to the provisions of Section 23(1) of the Land Acquisition Act, 1894, Mrs. Hazarika, learned Sr. counsel for the appellant has submitted that the amount of compensation to be awarded for the land acquired, is to be ascertained on the basis of the market value of the land at the date of publication of the notification under sub-section (1) of Section 4 of the Act, and not the date of taking over possession of the land, as has been done by the learned Court below. Mrs. Hazarika, therefore, submits that the judgment and order passed by the learned Court below may be set aside and the proceeding must be remanded to the reference Court for giving fresh decision on the basis of the materials available on record.

The learned State counsel appearing for the Collector supporting the impugned judgment and order passed has submitted that no illegality has been committed in dismissing the reference proceeding as admittedly the possession of the land was taken over in the year 1970 and also as the learned Court below did not find any material on record to ascertain the market value of the land as in the year 1970.

It is not in dispute that the notification dated 17.11.1978 issued under Section 4(1) of the Act was published on 06.12.1978. The possession of the land, however, was taken over in the year 1970. Section 23 of the Act provides that in determining the compensation to be awarded for the land acquired, the Court shall, apart from others, take into consideration the market value of the land at the date of publication of the notification under Section 4(1) of the Act. The learned reference Court has also in the impugned judgment and order observed so. The learned Court below, however, has dismissed the reference proceeding on the ground that the sale instances, which were proved by the present petitioner in the said proceeding, being in respect of the years 1977, 1995 and 1996, it is not possible to accept the petitioner's contention for higher compensation, on the basis of those sale instances, in respect of the land acquired in the year 1970.

It appears from the record that the notification under Section 4(1) of the Act was published on 06.12.1978 and not in the year 1970. The learned Court below wrongly assumed the year of acquisition as 1970.

That being the position, the impugned judgment and order dated 09.05.2000 passed by the learned reference Court is set aside. The learned Court below is directed to decide the reference proceeding afresh.

It also appears from the impugned judgment and order that the land was acquired for the purpose of Food Corporation of India. That being the position, the learned reference Court shall implead the requiring department, namely, the Food Corporation of India as party respondent in the said reference proceeding and issue notice on the said respondent. The Food Corporation of India, if it desires to cross-examine the witnesses already examined by the petitioner, it may do so apart from adducing evidence on their behalf.

Since the reference proceeding was instituted in the year 1999, an effort shall be made by the learned reference Court to decide the said proceeding within a period of 6(six) months from the date of appearance of the parties. The parties to the present proceeding are directed to appear before the learned reference Court on 21.02.2011 for taking necessary order from that Court.

The appeal is accordingly allowed as indicated above. No cost.